

**MEMORANDUM**

Agenda Item No. 13(D)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: **May 6, 2003**

FROM: Steve Shiver
County Manager

SUBJECT: Zoning Ordinance
Providing Land Use
Compatibility Between
Miami International
Airport and Off-Airport
Development

RECOMMENDATION

It is recommended that the Board adopt the attached Zoning Ordinance providing land use compatibility between Miami International Airport (MIA) and off-airport development.

BACKGROUND

In 1990, the Florida Legislature created the Airport Safety and Land Use Compatibility Study Commission ("Commission"). This Commission's charge was to assure that Florida's airports would have the capacity to handle growth without jeopardizing public health, safety, and welfare.

One of the recommendations of the Commission was to require the Florida Department of Transportation (FDOT) to establish guidelines for compatible land use around airports. As a result, Chapter 333 Florida Statutes "Airport Zoning" was developed to require local governments to develop specified land use control measures and consider the impact of airports and airport activity on environ land. This became one of the minimum requirements for adequate zoning protection on July 1, 1992.

Chapter 333 Florida Statutes "Airport Zoning" establishes the requirement for land use compatibility around airports in three basic areas:

- Airspace protection
- Compatibility with airport noise and operations
- Public safety

As such, encroachment of incompatible development in the vicinity of airports can be prevented, and further development controlled through County regulations.

The Ordinance is based on Federal Aviation Administration (FAA), (FDOT), Florida Statutes, and Miami Dade County Department of Planning and Zoning guidelines on establishing land use compatibility zoning around MIA.

The existing MIA ordinance is entitled Miami-Dade County Code Article XXXVII "Miami International Airport (Wilcox Field) Zoning" Section 33-331 to 33-343. This proposal accomplishes the following:

- (1) primarily deals with issues related to height of structures allowed to be constructed near MIA based on FAA Federal Aviation Regulation Part 77 standards and uses within certain airport districts.
- (2) authorizes the Aviation Director to appeal a decision to permit construction of an educational facility in a no school zone either in the incorporated or unincorporated area to the Board of County Commissioners.
- (3) requires disclosure by sellers/lessors to buyers/lessees of residentially zoned property that the property is within an airport zoning district and subject to certain restrictions as well as disclosure of the airport system's potential impacts on the property.

The proposed ordinance incorporates the required provisions of State Law regarding Airport Zoning, copies of which are attached hereto. The goal of this update is to prohibit encroachment of incompatible land use around MIA.

FISCAL/ECONOMIC IMPACT

The implementation of this ordinance is not expected to have any fiscal or economic impact on Miami-Dade County.

Attachments

CHAPTER 333

AIRPORT ZONING

- 333.01 Definitions.
- 333.02 Airport hazards and uses of land in airport vicinities contrary to public interest.
- 333.025 Permit required for structures exceeding federal obstruction standards.
- 333.03 Power to adopt airport zoning regulations.
- 333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.
- 333.05 Procedure for adoption of zoning regulations.
- 333.06 Airport zoning requirements.
- 333.065 Guidelines regarding land use near airports.
- 333.07 Permits and variances.
- 333.08 Appeals.
- 333.09 Administration of airport zoning regulations.
- 333.10 Board of adjustment.
- 333.11 Judicial review.
- 333.12 Acquisition of air rights.
- 333.13 Enforcement and remedies.
- 333.14 Short title.

333.01 Definitions.—For the purpose of this chapter, the following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

(2) "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose.

(3) "Airport hazard" means any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing or is otherwise hazardous to such taking off, maneuvering, or landing of aircraft and for which no person has previously obtained a permit or variance pursuant to s. 333.025 or s. 333.07.

(4) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(5) "Airport land use compatibility zoning" means airport zoning regulations restricting the use of land adjacent to or in the immediate vicinity of airports in the manner enumerated in s. 333.03(2) to activities and purposes compatible with the continuation of normal airport operations including landing and takeoff of aircraft in order to promote public health, safety, and general welfare.

(6) "Airport layout plan" means a detailed, scale engineering drawing, including pertinent dimensions, of an airport's current and planned facilities, their locations, and runway usage.

(7) "Obstruction" means any existing or proposed manmade object or object of natural growth or terrain that violates the standards contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29.

(8) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(9) "Political subdivision" means any county, city, town, village, or other subdivision or agency thereof, or any district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(10) "Runway clear zone" means a runway clear zone as defined in 14 C.F.R. part 151.9(b).

(11) "Structure" means any object, constructed or installed by humans, including, but without limitation thereof, buildings, towers, smokestacks, utility poles, and overhead transmission lines.

(12) "Tree" includes any plant of the vegetable kingdom.

History.—s. 1, ch. 23079, 1945; s. 2, ch. 75-16; s. 1, ch. 88-356; s. 70, ch. 90-136; s. 84, ch. 91-221; s. 482, ch. 95-148.

333.02 Airport hazards and uses of land in airport vicinities contrary to public interest.—

(1) It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the taking off, maneuvering, or landing of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. It is further found that certain activities and uses of land in the immediate vicinity of airports as enumerated in s. 333.03(2) are not compatible with normal airport operations, and may, if not regulated, also endanger the lives of the participants, adversely affect their health, or otherwise limit the accomplishment of normal activities. Accordingly, it is hereby declared:

(a) That the creation or establishment of an airport hazard and the incompatible use of land in airport vicinities are public nuisances and injure the community served by the airport in question;

(b) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards and incompatible land uses be prevented; and

(c) That this should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(2) It is further declared that the limitation of land uses incompatible with normal airport operations, the prevention of the creation or establishment of airport

hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein, or air rights thereover.

History.—s. 2, ch. 23079, 1945; s. 2, ch. 88-356; s. 71, ch. 90-136.

333.025 Permit required for structures exceeding federal obstruction standards.—

(1) In order to prevent the erection of structures dangerous to air navigation, subject to the provisions of subsections (2), (3), and (4), each person shall secure from the Department of Transportation a permit for the erection, alteration, or modification of any structure the result of which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29. However, permits from the Department of Transportation will be required only within an airport hazard area where federal standards are exceeded and if the proposed construction is within a 10-nautical-mile radius of the geographical center of a publicly owned or operated airport, a military airport, or an airport licensed by the state for public use.

(2) Affected airports will be considered as having those facilities which are shown on the airport master plan, or an airport layout plan submitted to the Federal Aviation Administration Airport District Office or comparable military documents, and will be so protected. Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the Federal Aviation Administration or to the Department of Transportation shall also be protected.

(3) Permit requirements of subsection (1) shall not apply to projects which received construction permits from the Federal Communications Commission for structures exceeding federal obstruction standards prior to May 20, 1975, provided such structures now exist; nor shall it apply to previously approved structures now existing, or any necessary replacement or repairs to such existing structures, so long as the height and location is unchanged.

(4) When political subdivisions have adopted adequate airspace protection in compliance with s. 333.03, and such regulations are on file with the Department of Transportation, a permit for such structure shall not be required from the Department of Transportation.

(5) The Department of Transportation shall, within 30 days of the receipt of an application for a permit, issue or deny a permit for the erection, alteration, or modification of any structure the result of which would exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29.

(6) In determining whether to issue or deny a permit, the department shall consider:

- (a) The nature of the terrain and height of existing structures.
- (b) Public and private interests and investments.
- (c) The character of flying operations and planned developments of airports.
- (d) Federal airways as designated by the Federal Aviation Administration.

(e) Whether the construction of the structure would cause an increase in the minimum altitude or the decision height at the affected airport.

(f) Technological advances.

(g) The safety of persons on the ground or in the air.

(h) Land use density.

(i) The safe and efficient use of navigable airspace.

(j) The cumulative effects on navigable airspace of all existing structures, proposed structures, and the applicable jurisdictions' comprehensive review of all other known proposed structures in the area.

(7) When issuing a permit under this section, the Department of Transportation shall, as a condition of such permit, require the obstruction marking and lighting of the permitted structure as prescribed in 333.07(3)(b).

(8) The Department of Transportation shall not approve a permit for the erection of a structure unless the applicant submits both documentation of compliance with the federal requirements for marking and lighting of proposed construction and a valid aeronautical study on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or an applicable aviation regulation.

History.—s. 3, ch. 75-16; s. 3, ch. 88-356; s. 7, ch. 92-152.

333.03 Power to adopt airport zoning regulations.—

(1)(a) In order to prevent the creation of airport hazards, every political subdivision having an airport hazard area within its territorial limits shall, by October 1, 1977, adopt, administer, and enforce, under the police power and in the interest of public safety, upon the conditions hereinafter prescribed, regulations for such airport hazard area.

(b) Where an airport is owned or controlled by a political subdivision and any airport hazard area within such airport is located wholly or partly within the territorial limits of said political subdivision, the political subdivision owning or controlling the airport, or the political subdivision within which the airport hazard area is located, shall either:

1. By interlocal agreement, in accordance with the provisions of chapter 163, adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question; or

2. By ordinance or resolution duly adopted by a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested in paragraph (a). The joint subdivision within which such area is located and the airport subdivision shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman appointed by a majority of the members so appointed. He shall be the airport manager or managers of the affected political subdivisions shall serve on the board in proportion to their relative capacity.

(c) Airport zoning regulations adopted under paragraph (a) shall, as a minimum, require:

1. A variance for the erection, alteration, or modification of any structure which would cause the structure to exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29;

2. Obstruction marking and lighting for structures as specified in s. 333.07(3);

3. Documentation showing compliance with the federal requirement for notification of proposed construction and a valid aeronautical evaluation submitted by each person applying for a variance;

4. Consideration of the criteria in s. 333.025(6), when determining whether to issue or deny a variance; and

5. That no variance shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation.

(d) The department shall issue copies of the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 to each political subdivision having airport hazard areas and, in cooperation with political subdivisions, shall issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree. Material distributed pursuant to this subsection shall be at no cost to authorized recipients.

(2) In the manner provided in subsection (1), interim airport land use compatibility zoning regulations shall be adopted. When political subdivisions have adopted land development regulations in accordance with the provisions of chapter 163 which address the use of land in the manner consistent with the provisions herein, adoption of airport land use compatibility regulations pursuant to this subsection shall not be required. Interim airport land use compatibility zoning regulations shall consider the following:

(a) Whether sanitary landfills are located within the following areas:

1. Within 10,000 feet from the nearest point of any runway used or planned to be used by turbojet or turbo-prop aircraft.

2. Within 5,000 feet from the nearest point of any runway used only by piston-type aircraft.

3. Outside the perimeters defined in subparagraphs 1. and 2., but still within the lateral limits of the civil airport imaginary surfaces defined in 14 C.F.R. part 77.25. Case-by-case review of such landfills is advised.

(b) Whether any landfill is located and constructed so that it attracts or sustains hazardous bird movements from feeding, water, or roosting areas into, or across, the runways or approach and departure patterns of aircraft. The political subdivision shall request from the airport authority or other governing body operating the airport a report on such bird feeding or roosting areas that at the time of the request are known to the airport. In preparing its report, the authority, or other governing body, shall consider whether the landfill will

incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. The airport authority or other governing body shall respond to the political subdivision no later than 30 days after receipt of such request.

(c) Where an airport authority or other governing body operating a publicly owned, public-use airport has conducted a noise study in accordance with the provisions of 14 C.F.R. part 150, neither residential construction nor any educational facility as defined in chapter 1013, with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction by 14 C.F.R. part 150, Appendix A or an equivalent noise level as established by other types of noise studies.

(d) Where an airport authority or other governing body operating a publicly owned, public-use airport has not conducted a noise study, neither residential construction nor any educational facility as defined in chapter 1013, with the exception of aviation school facilities, shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

(3) In the manner provided in subsection (1), airport zoning regulations shall be adopted which restrict new incompatible uses, activities, or construction within runway clear zones, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location.

(4) The procedures outlined in subsections (1), (2), and (3) for the adoption of such regulations are supplemental to any existing procedures utilized by political subdivisions in the adoption of such regulations.

(5) The Department of Transportation shall provide technical assistance to any political subdivision requesting assistance in the preparation of an airport zoning code. A copy of all local airport zoning codes, rules, and regulations, and amendments and proposed and granted variances thereto, shall be filed with the department.

(6) Nothing in subsection (2) or subsection (3) shall be construed to require the removal, alteration, sound conditioning, or other change, or to interfere with the continued use or adjacent expansion of any educational structure or site in existence on July 1, 1993, or

be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, as of July 1, 1993.

History.—s. 3, ch. 23079, 1945; s. 4, ch. 75-16; s. 4, ch. 88-356; s. 72, ch. 90-136; s. 8, ch. 92-152; s. 10, ch. 93-164; s. 1, ch. 94-201; s. 958, ch. 95-148; s. 971, ch. 2002-387.

333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.—

(1) **INCORPORATION.**—In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) **CONFLICT.**—In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

History.—s. 4, ch. 23079, 1945.

333.05 Procedure for adoption of zoning regulations.—

(1) **NOTICE AND HEARING.**—No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided in s. 333.03(1)(b) by the bodies therein provided and set forth, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published at least once a week for 2 consecutive weeks in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which are located the airport areas to be zoned.

(2) **AIRPORT ZONING COMMISSION.**—Prior to the initial zoning of any airport area under this chapter the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take any action until it has received the final report of such commission, and at least 15 days shall elapse between the receipt of the final report of the commission and the hearing to be held by the latter board. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

History.—s. 5, ch. 23079, 1945; s. 74, ch. 90-136; s. 23, ch. 90-279; s. 39, ch. 95-143.

333.06 Airport zoning requirements.—

(1) **REASONABLENESS.**—All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effect the purposes of this chapter. In determining what regulations it may adopt, each political subdivision or airport zoning board shall consider, among other things, the character of the flying operations to be conducted at the airport, the nature of the terrain within the airport hazard area and runway clear zone, the character of the neighborhood, the uses of the property to be zoned is put and adaptable, the impact of any new use, activity, or construction on the airport's operating capability and capacity.

(2) **INDEPENDENT JUSTIFICATION.**—The purpose of all airport zoning regulations adopted under this chapter is to provide both airspace protection and land use compatible with airport operation. An aspect of this purpose requires independent justification in order to promote the public interest in health, safety, and general welfare. Specifically, compliance with a runway clear zone which does not exceed height restrictions is not evidence per se that such activity, or construction is compatible with airport operations.

(3) **NONCONFORMING USES.**—No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3).

(4) **ADOPTION OF AIRPORT MASTER PLAN AND NOTICE TO AFFECTED LOCAL GOVERNMENTS.**—An airport master plan shall be prepared for each publicly owned and operated airport by the Department of Transportation under chapter 333. The authorized entity having responsibility for the operation of the airport, when either receiving funding from or submitting to a state or federal government agency with funding or approval jurisdiction a "finding of no significant impact," an environmental assessment, a site-selection study, an airport master plan, an amendment to an airport master plan, shall simultaneously submit a copy of said request, study, assessment, study, plan, or amendments by mail to all affected local governments. For the purposes of this subsection, "affected local government" is defined as any city or county having jurisdiction over the airport and any city or county located within the boundaries of the land subject to the airport master plan.

History.—s. 6, ch. 23079, 1945; s. 75, ch. 90-136; s. 76, ch. 2002

333.065 Guidelines regarding land use near airports.—The Department of Transportation, in consultation with the Department of Community Development, shall adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports. These guidelines shall utilize acceptable and established c

measures, such as the Air Installation Compatible Use Zone standards, the Florida Statutes, and applicable Federal Aviation Administration documents.
History.—s. 49, ch. 93-206.

333.07 Permits and variances.—

(1) PERMITS.—

(a) Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or would permit a nonconforming structure or tree or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

(b) Whenever the administrative agency determines that a nonconforming use or nonconforming structure or tree has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and, whether application is made for a permit under this subsection or not, the said agency may by appropriate action, compel the owner of the nonconforming structure or tree, at his or her own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may report the violation to the political subdivision involved therein, which subdivision, through its appropriate agency, may proceed to have the object so lowered, removed, reconstructed, or equipped, and assess the cost and expense thereof upon the object or the land whereon it is or was located, and, unless such an assessment is paid within 90 days from the service of notice thereof on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of 6 percent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 85.

(c) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.

(2) VARIANCES.—

(a) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the airport zoning regulations adopted under this chapter or any land development regulation adopted pursuant to the provisions of chapter 163 pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations in question. At the time of filing the application, the applicant shall forward to the department by certified mail, return receipt requested, a copy of the application. The department shall have 45 days from receipt of the application to comment and to provide its comments or waiver of that right to the applicant and the board of adjustment. The department shall include its explanation for any objections stated in its comments. If the department fails to provide its comments within 45 days of receipt of the application, its right to comment is waived. The board of adjustment may proceed with its consideration of the application only upon the receipt of the department's comments or waiver of that right as demonstrated by the filing of a copy of the return receipt with the board. Noncompliance with this section shall be grounds to appeal pursuant to s. 333.08 and to apply for judicial relief pursuant to s. 333.11. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and this chapter. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(b) The Department of Transportation shall have the authority to appeal any variance granted under this chapter pursuant to s. 333.08, and to apply for judicial relief pursuant to s. 333.11.

(3) OBSTRUCTION MARKING AND LIGHTING.—

(a) In granting any permit or variance under this section, the administrative agency or board of adjustment shall require the owner of the structure or tree in question to install, operate, and maintain thereon, at his or her own expense, such marking and lighting as may be necessary to indicate to aircraft pilots the presence of an obstruction.

(b) Such marking and lighting shall conform to the specific standards established by rule by the Department of Transportation.

(c) Existing structures not in compliance on October 1, 1988, shall be required to comply whenever the existing marking requires refurbishment, whenever the existing lighting requires replacement, or within 5 years of October 1, 1988, whichever occurs first.

History.—s. 7, ch. 23079, 1945; s. 5, ch. 88-356; s. 76, ch. 90-136; s. 483, ch. 95-148.

333.08 Appeals.—

(1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted

under this chapter; or any governing body of a political subdivision, or the Department of Transportation, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals, as the agency involved may elect.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by an order of the board on notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

History.—s. 8, ch. 23079, 1945; s. 6, ch. 88-356.

333.09 Administration of airport zoning regulations.—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under s. 333.07(1), deciding all matters under s. 333.07(3), as they pertain to such agency, and all other matters under this chapter applying to said agency, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

History.—s. 9, ch. 23079, 1945.

333.10 Board of adjustment.—

(1) All airport zoning regulations adopted under chapter shall provide for a board of adjustment to hear and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by an administrative agency in the enforcement of the airport zoning regulations, as provided in s. 333.08.

(b) To hear and decide any special exception to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under s. 333.07(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of 3 years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and due notice after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held on the call of the chair and at such other times as the board may determine. The chair, or in the chair's absence the acting chair, may administer oaths and compel attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History.—s. 10, ch. 23079, 1945; s. 484, ch. 95-148.

333.11 Judicial review.—

(1) Any person aggrieved, or taxpayer affected by any decision of a board of adjustment, or any governing body of a political subdivision or the Department of Transportation or any joint airport zoning board, or any administrative agency hereunder, may apply for judicial relief to the circuit court in the judicial circuit where the board of adjustment is located within 30 days after rendition of the decision by the board of adjustment. Review shall be by petition for writ of certiorari which shall be governed by the Florida Rules of Appellate Procedure.

(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and on due cause shown, grant a restraining order.

(3) The board of adjustment shall not be required to turn the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof of such portions thereof as may be called for by the board. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do

(5) In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

(6) No appeal shall be or is permitted under this chapter, to any courts, as herein provided, save and except an appeal from a decision of the board of adjustment, the appeal herein provided being from such final decision of such board only, the appellant being hereby required to exhaust his or her remedies hereunder of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court hereunder.

History.—s. 11, ch. 23079, 1945; s. 43, ch. 63-512; s. 7, ch. 88-356; s. 485, ch. 48.

333.12 Acquisition of air rights.—In any case in which it is desired to remove, lower or otherwise terminate a nonconforming structure or use; or the approach protection necessary cannot, because of constitutional limitations, be provided by airport regulations under this chapter; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the

political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such air right, navigation easement, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, tree, structure, or use, in question, as may be necessary to effectuate the purposes of this chapter, and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. In the case of the purchase of any property or any easement or estate or interest therein or the acquisition of the same by the power of eminent domain the political subdivision making such purchase or exercising such power shall in addition to the damages for the taking, injury or destruction of property also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

History.—s. 12, ch. 23079, 1945.

333.13 Enforcement and remedies.—

(1) Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day a violation continues to exist shall constitute a separate offense.

(2) In addition, the political subdivision or agency adopting the airport zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

(3) The Department of Transportation may institute a civil action for injunctive relief in the appropriate circuit court to prevent violation of any provision of this chapter.

History.—s. 13, ch. 23079, 1945; s. 232, ch. 71-136; s. 5, ch. 75-16.

333.14 Short title.—This chapter shall be known and may be cited as the "Airport Zoning Law of 1945."

History.—s. 15, ch. 23079, 1945.

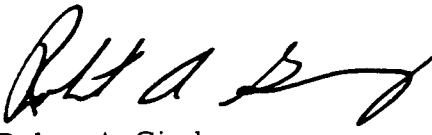


MEMORANDUM

(Revised)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: May 6, 2003

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 13(D)

Please note any items checked.

- ☒ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☒ 6 weeks required between first reading and public hearing
- ☒ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor

Agenda Item No. 13(D)

Veto _____

5-6-03

Override _____

ORDINANCE NO. _____

ORDINANCE RELATING TO MIAMI INTERNATIONAL AIRPORT (WILCOX FIELD) ZONING; PROVIDING FOR MINIMUM ZONING STANDARDS, DEFINITIONS, AIRPORT ZONING, ZONE CLASSIFICATION DISTRICTS, HEIGHT LIMITATIONS, LAND USE ZONING CRITERIA, USE RESTRICTIONS, ADMINISTRATION AND ENFORCEMENT, PERMITS, AND NONCONFORMING USES; PROVIDING FOR VARIANCES, EXCEPTIONS, CONDITIONS TO VARIANCES AND APPEALS THEREFROM; REQUIRING DISCLOSURE BY SELLERS OR LESSORS OF RESIDENTIAL PROPERTY LOCATED WITHIN ANY AIRPORT ZONING DISTRICT; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Article XXXVII of the Code of Miami-Dade County, Florida, is hereby amended as follows:¹

**ARTICLE XXXVII. MIAMI
INTERNATIONAL AIRPORT (WILCOX
FIELD) ZONING**

*

*

*

**Sec. 33-331. Provisions hereof established as minimum
standards governing zoning.**

It is established that the airport zoning area for Miami International Airport (Wilcox Field), the zone classification

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

districts therein and the height limitations applicable to such districts, as the same are hereinafter set forth, shall be incorporated with all other minimum standards governing zoning heretofore or hereinafter adopted pursuant to Section 4.07 of the Home Rule Charter for ~~[[Metropolitan]]~~ >> Miami << Dade County, Florida.

Sec. 33-332. Definitions.

In construing the provisions hereof and each and every word, term, phrase or part thereof, where the context will permit, the definitions provided in Section 1.01, Florida Statutes, and Section 33-1 and Section 33-302 of the Code of ~~[[Metropolitan]]~~ >> Miami << Dade County, Florida, and the following definitions shall apply:

* * *

- (3) ~~[[Airport hazard]]~~ >> Hazard to Air Navigation << means >> an object which the Federal Aviation Administration determines will have substantial adverse effect upon the safe and efficient use of navigable airspace by aircraft, operation of air navigation facilities, or existing or potential airport capacity. << ~~[[any structure or tree or use of land which obstructs the airspace required for or is otherwise hazardous to the flight of aircraft in landing or taking off at the airport.]]~~

* * *

- (10) Runway means ~~[[a]]~~ >> the << ~~[[paved surface of uniform width used by aircraft by aircraft for]]~~ >> defined area on an airport prepared for << landing and ~~[[taking off]]~~ >> take-off of aircraft along its length. <<

* * *

- >> (14) Obstruction means any structure, growth, or other object including a mobile object, which exceeds the height limitation as set forth herein.

- (15) Airport hazard means any structure, obstruction, tree or use of land which would exceed the federal obstruction standards as contained in 14 C.F.R., SS. 77.21, 77.23, 77.25, 77.28 and 77.29 and which obstructs the airspace required for the flight of aircraft in taking off.

maneuvering, or landing or is otherwise hazardous to such taking off, maneuvering, or landing of aircraft.

- (16) Educational facilities shall mean those facilities as defined by Chapter 1013, Florida Statutes, as amended, and as defined by the Code of Miami-Dade County. It is provided, however, that for purposes of this article educational facilities shall not include "baby-sitting services for shoppers" and "family day care homes" as those terms are defined in section 33-151.11 of the Code.
- (17) Aviation-related schools shall mean any educational facility whose greater portion of its curriculum is in the education or training in the science and art of flight and airports, including but not limited to: the operation and construction of aircraft, aircraft power plants and accessories, including the repair, packing and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or other air navigation facilities; and instruction in flying or subjects pertaining thereto.
- (18) New Construction shall mean any residential or educational facility or other structure constructed after the effective date of this Ordinance.
- (19) Height : For the purpose of determining the height limits in all districts set forth in this article and shown on the boundary map for airport zone classification districts, the datum shall be mean sea level (MSL) elevation unless otherwise specified.
- (20) Day Night Noise Level (DNL) Noise Contour : Map showing concentrations of aircraft noise around an airport. This is calculated based on DNL or day night noise levels which are averaged over a year.
- (21) Official Noise Contour Map : A noise contour map prepared for an airport and approved by the operator of that airport.<<

Sec. 33-333. Establishment of airport zoning area for Miami International Airport (Wilcox Field).

For the purpose of this article there is hereby created and established the airport zoning area for Miami International Airport (Wilcox Field), and it is hereby ordained that such area shall include, and that the provisions of this article shall be applicable to and embrace, all of the unincorporated and incorporated land and water area lying, situate and being in those certain portions of >>Miami-<<Dade County, Florida, within the following described boundaries:

- (1) *Northern boundary.* Commencing at the intersection of the >>Miami-<< Dade County-Broward County line and the centerline of U.S. Highway 27, proceed easterly along the County line to the range line between Range 42 and Range 43 East.
- (2) *Eastern boundary.* Commencing at the intersection of the >>Miami-<< Dade County-Broward County extended, and the range line between Range 42 East and Range 43 East, proceed southerly along said range line to the intersection of theoretical S.E. 152 Street.

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Sec. 33-334. Establishment of zone classification districts for airport zoning area. [~~]; criteria for review of land use and zoning modifications in airport zoning area~~]

(A) For the purpose of this article all of the airport zoning area for Miami International Airport (Wilcox Field), as the same is created, established and described hereinbefore, is hereby divided into airport zone classification districts as follows:

- (1) *L or Landing districts >>(Primary Surfaces)<<.* A "landing district" is established for each instrument runway. A landing district for an instrument runway shall have a uniform width of one thousand (1,000) feet, shall extend for the full length of such runway plus a distance of two hundred (200) feet beyond each end thereof and shall include such runway and be symmetrical about the centerline thereof. Each landing district shall embrace and include all of the land and water area lying vertically

beneath an imaginary surface referred to as the primary surface which shall have an elevation equal to the elevation of the nearest point on the runway centerline.

- (2) *IA or Instrument approach districts.* An "instrument approach district" is established for each end of each instrument runway for instrument landings and takeoffs, and it is further established that each instrument approach district shall embrace and include all of the land and water area lying vertically beneath an imaginary inclined surface which shall hereafter, for the purposes of this article, be referred to and described as the instrument approach surface.

The instrument approach surface shall begin on a base one thousand (1,000) feet wide, such base to be at a position two hundred (200) feet beyond the end of the runway and from such base the approach surface shall widen uniformly to sixteen thousand (16,000) feet at a horizontal distance of fifty thousand ~~>>two hundred<<~~ (50,[[000]]>>200<<) feet beyond the ~~[[base of the approach surface,]]~~ >>end of the runway<< the centerline of ~~[[such approach]]~~ >>this<< surface being the ~~[[continuation]]~~ >>extension<< of the centerline of the runway.

* * *

- (5) *DZ or Departure zone district.* A "departure zone district" is hereby established adjacent to each instrument runway, and it is further established that each departure zone district shall embrace and include all of the land and water area lying vertically beneath imaginary inclined surfaces which shall hereafter, for the purpose of this article, be referred to and described as departure ~~[[zoning area; criteria for review of land use and zoning modifications in airport zoning area]]~~ >>zone surface 1 and departure zone surface 2. The high structure set-aside district, which is hereinafter established and described, shall not be a part of and is hereby specifically excluded from the departure zone district <<.

* * *

Sec. 33-335. Establishment of height limitations for zone classification districts in the airport zoning area.

Except as otherwise provided elsewhere in this article, no structure shall be erected or altered and no tree shall be allowed to grow or be maintained in any district created and established by this article to a height in excess of the height limits herein established for such district. Such height limitations will, in applying the provisions of this article, be corrected to elevations referred to the heretofore established mean sea level datum plane, by adding such height limitations to the mean sea level elevation of the point, line or plane to which such height limitation is referenced, or to the airport elevation, as the context of this article requires. An area, a structure or a tree located in more than one (1) of the described districts is considered to be only in the district with the more restrictive height limitation. Such limitations are hereby established for the districts as follows:

- (1) ~~[[Landing districts: Structures and trees will not be permitted in landing districts except as required, necessary and pertinent to the operation and maintenance of Miami International Airport (Wilcox Field) and then only to the extent permitted or authorized by applicable rules or regulation promulgated by Miami Dade County and the Federal Aviation Administration, or its successor counterpart]] >>For Runways 9L, 27R, 12 and 30: One (1) foot vertically for each sixty-five (65) feet horizontally beginning at a point two hundred (200) feet from the end of each instrument runway and extending for a distance of ten thousand two hundred (10,200) feet from the end of each runway; thence one (1) foot vertically for each forty (40) feet horizontally for a distance of forty thousand (40,000) feet to a point fifty thousand two hundred (50,200) feet from the end of each runway.<<~~
- (2) ~~[[Instrument approach districts:~~
 - (a) ~~For Runways 9L, 27R, 12 and 30: One (1) foot vertically for each sixty-five (65) feet horizontally beginning at a point two hundred (200) feet from the end of each instrument runway and extending for a distance of ten thousand two hundred (10,200) feet from the end of each runway; thence one (1) foot vertically for each forty (40) feet horizontally for a distance of forty thousand (40,000) feet to a~~

~~point fifty thousand two hundred (50,200) feet from the end of each runway.~~

- (b)] For Runways 9R and 27L, one (1) foot vertically for each fifty (50) feet horizontally beginning at a point two hundred (200) feet from the end of these instrument runways and extending for a distance of ten thousand two hundred (10,200) feet from the end of each runway; thence one (1) foot vertically for each forty (40) feet horizontally for a distance of forty thousand (40,000) feet to a point fifty thousand two hundred (50,200) feet from the end of each runway.

* * *

Sec. 33-336. ~~[[Zone classification district boundary map for the airport zoning area]]~~ >>Establishment of land use zoning classification maps, criteria and use restrictions for Miami International Airport.<<

~~[[The Board of County Commissioners hereby adopts, approves and ratifies a drawing "Airport Zoning Area Map Miami International Airport Aircraft Arrival/Departure Districts," the original of which is on file with the Clerk of the Board. Such drawing shall locate and identify Miami International Airport (Wilcox Field) and other topographic data pertinent thereto and to the purposes of this article, and shall truly and faithfully depict the boundary of the airport zoning area and the boundaries and by contour lines, the height limitations, for the several zone classification districts therein as the same are established herein and as the same may be changed, varied, amended or supplemented by resolution as provided and prescribed in Chapter 33 of the Code of Miami Dade County, Florida. Copies or prints of such drawing shall be maintained and kept on file in the offices of the Miami Dade County Aviation Department and the Department and shall be prima facie evidence of the boundaries of the zone classification districts and the height limitations applicable thereto and therein.]]~~

>>(A) For the purpose of this article all of the land use zoning criteria for Miami International Airport, as the same is

created established and described hereinbefore, is hereby divided into classifications as follows:

- (1) Inner District (ILZ). An ILZ for Miami International Airport is considered to be within the 75 DNL and greater noise contour of the latest official aircraft noise contour map for the airport.
 - (2) Outer District (OLZ). The OLZ for Miami International Airport is considered to be within the 65 DNL to 74 DNL noise contour of the latest official aircraft noise contour map for the airport.
 - (3) No School Zone (NSZ). A NSZ for each runway covers an area that extends five (5) statute miles from the end of a runway in a direct line along the extended centerline of the runway, and has a width measuring one-half (1/2) the length of the runway.
 - (4) Inner Safety Zone (ISZ), also referred to as the Runway Protection Zone (RPZ). For Miami International Airport, the ISZ is defined as an area which is centered about the extended runway centerline and begins 200 feet beyond the end of the area usable for take-off or landing. The ISZ dimension for Runways 12/30, 9R/27L, 9L/27R and proposed 8/26 begin at a width of 1,000 feet and extends 2,500 feet to a width of 1,750 feet.
 - (5) Outer Safety Zone (OSZ). The OSZ is described as an area that extends outward from the ISZ. The OSZ dimensions for Runways 12/30, 9R/27L and 9L/27R begin at a width of 1750 feet and extend outward 2,300 feet to a width at 2440 feet.
- (B.) Except as otherwise provided elsewhere in this article, or unless otherwise approved at public hearing, limitations on development of land, structures, and utilization of land within areas designated herein as being restricted due to non-compatibility with aircraft operations are in effect. In situations where land is beneath more than one land use classification the most restrictive shall apply. Restrictions

to insure land use compatibility around Miami International Airport are hereby established as follows:

- (1) Inner District (ILZ). New residential construction and educational facilities, excluding aviation related schools, are prohibited within this land use classification.
 - (2) Outer District (OLZ). New residential construction constructed after the effective date of this ordinance and educational facilities, excluding aviation related schools, within this land use classification are required to incorporate at least a 25 decibel (db) Noise Level Reduction (NLR) in the design/construction of the structure.
 - (3) No School Zone (NSZ). New educational facilities, excluding aviation related schools, are prohibited within this land use classification. The requirement of section 33-284.51 (d) to provide a child care use in a TND zoning district shall not apply where the Director of Planning and Zoning determines that the TND zoning district, is encumbered in whole or in part by a NSZ and no suitable site within a TND zoning district exists for a child care facility outside the NSZ.
 - (4) Inner Safety Zone (ISZ). New residential construction, educational facilities (excluding aviation related schools), churches and places of public assembly are prohibited within this land use classification.
 - (5) Outer Safety Zone (OSZ). Residential units are limited to less than two per acre. Educational facilities (excluding aviation related schools) and places of public assembly are prohibited.
- (C.) The Board of County Commissioners shall by ordinance, adopt, approve and ratify drawings which shall be entitled "Airport Land Use Zoning Map for Miami International Airport and Surrounding Area", and "Airport Height Zoning Map for Miami International Airport." Such drawings shall locate and identify Miami International Airport and other topographic data pertinent thereto and for

the purposes of this article it shall also accurately depict the boundary of the airport zoning area and the boundaries of the airport zone classification districts. By contour lines, the height limitations and airport zone classification districts are established herein. Copies or prints of such drawings shall be maintained and kept on file in the offices of the Miami-Dade County Aviation Department and the Miami-Dade County Department of Planning and Zoning and shall be prima facie evidence of the boundaries of the airport zone classification districts and the height limitations applicable thereto and therein.

(D.) Except as otherwise provided elsewhere in this article, all use and development of land, water and structures within the airport zoning area of Miami International Airport shall conform with the limitations established in Section 33-336(B) above. These limitations shall serve as minimum restrictions and the absence of a parcel's inclusion in a specific limitation established by the article shall not serve as a basis to approve a land use not otherwise in conformity with the applicable local government comprehensive plan, nor as a basis to amend the comprehensive plan, nor as a basis to amend the comprehensive plan to authorize additional use in the flight path of Miami International Airport. Additionally, it shall be unlawful to put any land or water located within L, T, and within TR Districts adjoining L and within the inner ten thousand (10,000) feet of IA Districts and the adjoining portions of TR Districts to any of the following prohibited uses:

- (1) Establishments or uses that emit smoke, gases, or dust in quantities or densities sufficient to jeopardize the safe use of the airport.
- (2) Notwithstanding any other provisions of this article, no use may be made of land or water within the airport zoning area in such a manner as to create electrical interference with radio communications between the airport and aircraft; make it difficult for aircraft pilots and tower control operators to distinguish between airport lights, aircraft and others; result in glare in the eyes of aircraft pilots using the airport, or in the eyes of the tower control operators; impair visibility in the vicinity of the

airport; or otherwise endanger the landing, taking off or maneuvering of aircraft.

- (3) Neither residential construction nor any educational facility construction, with the exception of aviation related school facilities, shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.
- (4) Land fills and associated uses that emit smoke gases, dust or any use that may attract birds shall be prohibited within 10,000 feet of any runway.
- (5) Aircraft touch and goes are not permitted.

(E.) Construction of any educational facility, with the exception of aviation school related facilities, is prohibited at either end of a runway of Miami International Airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway.

(F.) *Airport disclosure statement for real property transactions involving residential property within the airport zoning districts.*

- a. Effective as of the date of adoption of this ordinance, any person marketing residential property for sale, rental or lease in the zoning districts described herein shall provide to all parties acquiring an interest in the property, including future purchasers, mortgagees, occupiers and users, the following written statement, which shall be set forth on a separate sheet of paper and shall be signed by the party acquiring interest in the property prior to the execution of any other instrument committing the party to any interest in the affected property:

LAND INVOLVED IN THIS
TRANSACTION IS LOCATED WITHIN
AN AIRPORT ZONING DISTRICT.

ACTIVITIES RELATING TO
OPERATION OF THE AIRPORT THAT
MAY BE LAWFULLY CONDUCTED
WITHIN THIS AREA MAY RESULT IN
THE GENERATION OF TRAFFIC,
NOISE, ODORS, DUST AND FUMES.

IN ADDITION, THIS LAND MAY BE
SUBJECT TO RESTRICTIONS ON THE
HEIGHT OF STRUCTURES, OBJECTS
OF NATURAL GROWTH AND OTHER
OBSTRUCTIONS AS REQUIRED BY
FEDERAL AVIATION REGULATIONS,
PART 77, AND THE CODE OF MIAMI-
DADE COUNTY, FLORIDA, ARTICLE
33.

- b. It shall be the seller's responsibility that the
following statement shall appear in a prominent
location on the face of any instrument conveying
title to or any other interest in residential property
within the airport zoning districts. The seller shall
record the notarized statement with the Clerk of the
Court:

I HEREBY CERTIFY THAT I HAVE
READ, UNDERSTAND AND HAVE
SIGNED THE AIRPORT DISCLOSURE
STATEMENT FOR REAL PROPERTY
TRANSACTIONS INVOLVING
RESIDENTIAL PROPERTY WITHIN THE
AIRPORT ZONING DISTRICTS, AS
REQUIRED BY SECTION 33-336 , CODE
OF MIAMI-DADE COUNTY, FLORIDA.

Signature of Purchaser Date <<

Sec. 33-337. ~~[[Use restrictions.]]~~ >>Reserved.<<

~~[[Except as otherwise provided in this article, it shall be
unlawful to put any land or water located within L or HZ Districts
and within TR Districts adjoining L Districts and within the inner~~

~~ten thousand (10,000) feet of IA Districts and the adjoining portions of TR Districts to any of the following prohibited uses:~~

~~(a) — Prohibited uses:~~

~~(1) — Establishment or uses that emit smoke, gases, or dust in quantities or densities sufficient to jeopardize the safe use of the airport.~~

~~(2) — Notwithstanding any other provisions of this article, no use may be made of land or water within the airport zoning area in such a manner as to create electrical interference with radio communications between the airport and aircraft; make it difficult for aircraft pilots and tower control operators to distinguish between airport lights, aircraft and others; result in glare in the eyes of aircraft pilots using the airport, or in the eyes of the control tower operators; impair visibility in the vicinity of the airport; or otherwise endanger the landing, taking off or maneuvering of aircraft.]]~~

Sec. 33-338. Nonconforming uses, regulations not retroactive.

The regulations prescribed by this article or any amendment thereto shall not be construed to require the removal, lowering, or other change or alteration of any permanent structure or tree or use lawfully in existence not conforming to the regulations as of ~~[[the effective date hereof]]~~ >> July 19, 1969, << or otherwise interfere with the continuance of any nonconforming use. After the effective date ~~[[hereof]]~~ >> of this ordinance << property owners shall not be permitted to >> erect any structure or to << grow or maintain trees to heights in excess of those provided herein ~~[[Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was lawfully begun prior to the effective date of this article, and is diligently prosecuted and completed within the time limit as prescribed by the South Florida Building Code]]~~ Notwithstanding the preceding provisions of this article, the owner of any such nonconforming structure or tree is hereby required to permit the installation, operation and maintenance thereon of such marking, or marking and lighting, as shall be deemed necessary by the Director of the Miami-Dade County Aviation Department, to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazard. Such marking, or marking and lighting, and the installation, operation and maintenance thereof, or such disposition

of the hazard as may be agreed upon by and between the owner and the Director of the Miami-Dade County Aviation Department in lieu of such marking, or marking and lighting, shall be at the expense of the Miami-Dade County Aviation Department.

>>Nothing contained herein shall be construed to require the removal, alteration, sound conditioning or other change, or to interfere with the continued use or adjacent expansion, of any educational structure or site in existence on July 1, 1993, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former Section 235.19, Florida Statutes, as of July 1, 1993.

For the purposes of determining what shall constitute a nonconforming use, nothing contained herein shall be construed to prohibit or to require the removal of any lawful residential construction existing on the effective date of this ordinance or the approval of new residential construction on land located inside a residential zoning district, or authorized for residential development by the applicable comprehensive plan on the effective date of this ordinance. Any new residential construction on land identified in this paragraph is required to incorporate at least a 25 db Noise Level Reduction (NLR) into the design/construction of the structure.

For the purposes of determining what shall constitute a non-conforming use, nothing contained herein shall be construed to prohibit the construction of educational facilities approved by appropriate zoning resolution prior to the effective date of this ordinance.<<

Sec. 33-339. Administration and enforcement.

It shall be the duty of the Director >>of the Department of Planning and Zoning of Miami-Dade County, Florida,<< to administer [[and enforce]] the regulations prescribed herein in accordance with Section 2-[[105]]>>118<<, Code of Miami-Dade County, Florida >>within unincorporated Miami-Dade County<<. It shall be the duty of Team Metro to enforce these regulations >>within unincorporated Miami-Dade County. The appropriate municipal official shall administer and enforce these regulations in the incorporated areas for Miami-Dade County.<<

In the event of any violation of the regulations contained herein, the person responsible for such violation shall be given notice in

writing by Team Metro >>or the appropriate municipal administrative official<<. Such notice shall indicate the nature of the violation and the necessary action to correct or abate the violation. A copy of said notice shall be sent to the Director>>s<< of the Miami-Dade County Aviation Department,>>the Department of Planning and Zoning or the appropriate municipal administrative official.<< [[A]] >>The Director of the Department of Planning and Zoning or the Director of the appropriate municipal office <<[[Department administrative official]] >>or designee<< shall order discontinuance of use of land or buildings, removal of trees to conform with height limitations set forth herein, removal of buildings, additions, alterations, or structures, discontinuance of any work being done; or shall take any or all other action necessary to correct violations and obtain compliance with all the provisions of this article.

>>Applications for variances, exceptions, or any authorization for any construction or use not authorized by Sections 33-334, 33-335, 33-336, 33-337, 33-338, 33-342 or 33-343 shall be submitted to the Director of the Department of Planning and Zoning or appropriate municipal administrative official and determined in accordance with the procedures and requirements set forth in Section 33-342 in the unincorporated area or applicable procedures in the incorporated area and 333.07, Florida Statutes. For purposes of the aforesaid applications only, these procedures shall replace any different procedures set forth elsewhere in the Code of Miami-Dade County.<<

Sec. 33-340. Permits.

~~[[Applications for permits under this article shall be obtained from the appropriate Building and Zoning Department or agency.~~

~~Applications for permits for all construction, for adding height to any existing structures, and for all alterations, repairs, or additions that will change the use of the structure from the existing use to any commercial or industrial use in any airport zone classification district lying within unincorporated areas of Miami-Dade County, shall be obtained from the Director and from the Building Department. Application for permits shall include the height and location of derricks, draglines, cranes and other boom-equipped machinery, if such machinery is to be used during construction.~~

~~All applications for permits made to appropriate municipal Building and Zoning Departments or agencies for all construction or for adding height to any existing structure, and for all alterations, repairs, or additions that will change the use of a structure from the existing use to any commercial or industrial use in any airport zone classification district lying within a municipality for which airport zone classification district boundaries have been established herein, shall be approved by the Director and the Building Official or by their duly authorized representatives prior to issuance of the permit by any municipal Building and Zoning Department or agency for the purpose of assuring compliance with the minimum standards governing zoning as set forth in this article; provided, however, no approval by the Director and Building Official will be required for building and use permits from municipalities which have adopted by ordinance airport zoning regulations, (or general zoning ordinances) the minimum standards of which are at least as restrictive as the minimum standards prescribed herein as such apply to the areas covered by this article. No approval by the Director and Building Official will be required for building and use permits from municipalities which have adopted by ordinance the minimum standards of which are at least as restrictive as the minimum standards prescribed herein as such apply to the area covered by this article; provided, however, that no municipality may grant any variance to said general zoning regulations which would make said minimum standards less restrictive than the minimum standards prescribed herein.~~

~~Permits will be approved by the Director and Building Official or their duly authorized representatives unless the proposal fails to meet the requirements of all applicable zoning regulations and building codes, including the provisions of this article.~~

~~Permits, when applied for by applicants intending to use derricks, draglines, cranes and other boom-equipped machinery for such construction, reconstruction or alteration as is consistent with the provisions hereof, shall, when the machine operating height exceeds the height limitations imposed by this article, require the applicant to mark, or to mark and light the machine to reflect conformity with the Federal Aviation Administration's or the Miami Dade County Aviation Department's standards for marking and lighting obstructions, whichever is the more restrictive, and shall require the applicant in such cases to obtain approval from the Director of the Miami Dade County Aviation Department of the location, height and time of operation for such construction~~

~~equipment use prior to the issuance of a construction permit to the applicant.~~

~~Any decision of the Director may be appealed as provided and prescribed under Article XXXVI, of Chapter 33, Code of Miami-Dade County, Florida.]]~~

>>In the incorporated areas of Miami-Dade County, approval of permits under this article shall be obtained from the appropriate Building Department Director or successor agency of a municipality for the purpose of assuring compliance with the minimum zoning standards as set forth in this article. In the unincorporated areas, approval of permits under this article shall be obtained from the Directors of the Miami-Dade County Building Department and the Department of Planning and Zoning. In all instances, a copy of the application for permit shall be provided to the Director of the Miami-Dade Aviation Department at the time said permit application is submitted. Proof of notice to the Miami-Dade Aviation Department shall be submitted to the appropriate zoning official and to the appropriate building department prior to issuance of a permit. The Director of Miami-Dade Aviation Department shall have seven (7) days to submit written objections to the requested permit application, if any, to the permit applicant, to the appropriate zoning official and to the appropriate building department.

Approval of permits is required for all construction, for adding height to any existing structure, for all alterations, repairs, or additions that will change the use of the structure from the existing use to any commercial, industrial, educational or residential use in any airport zone classification district lying within both the unincorporated as well as the incorporated areas of Miami-Dade County, for which airport zone classification district boundaries have been established herein. Such applications for permits shall include the height and location of derricks, draglines, cranes and other boom-equipped machinery, if such machinery is used during construction. No person shall operate such equipment until approval from the Director of the Miami-Dade County Aviation Department is obtained.

Notwithstanding any provisions of this ordinance, in approving any permit under this article, the Director of the Miami-Dade County Aviation Department shall require the owner of the structure or tree for which a permit is being sought, to install, operate and maintain thereon at the owners sole expense, such

marking and lighting as may be necessary to indicate to aircraft pilots the presence of an obstruction, such marking and lighting to conform to the specific standard established by rule of the Department of Transportation.

Any decision of the Miami-Dade County Department of Planning and Zoning shall be appealed as provided and prescribed under Article XXXVI, of Chapter 33, Code of Miami-Dade County, Florida. Any decision of the Miami-Dade County Building Department regarding the application of airport zoning regulations shall be appealed to the Board of County Commissioners acting as the Board of Adjustment. Any decision of a municipal official shall be appealed pursuant to the appeal procedures of the municipality having jurisdiction over the subject property.<<

Sec. 33-341. Nonconforming uses abandoned or destroyed.

Whenever the >>appropriate zoning<< Director determines that the height limits or use standards of this article will be violated by the reconstruction, substitution or replacement of an existing nonconforming use, structure or tree, no permit shall be granted for such reconstruction, substitution or replacement. Whether application is made for a permit under this paragraph or not, the >>appropriate zoning<< Director may by appropriate action require the owner of the nonconforming structure or tree to permit the Miami-Dade County Aviation Department at its expense to lower, remove, or mark, or mark and light such object as may be necessary to conform to these regulations.

Sec. 33-342. Variances >>and exceptions<< limited.

>>(1)<< Any person desiring to erect or increase the height of any structure, or permit the growth of any tree or otherwise use his property, not in accordance with the regulations prescribed in this article, shall follow the procedures set forth below for a variance from such regulations. ~~[[as provided as prescribed under Article XXXVI of Chapter 33, Code of Miami Dade County, Florida. Allowance of such variances shall be limited only to those cases in which it is duly found that a literal application or enforcement of the regulations would result in practical difficulty and unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of this article, and such zoning board is hereby admonished that the intent and purpose of this article is to promote the health, safety and general welfare of the~~

~~inhabitants of Miami Dade County, Florida, by preventing the creation or establishment of airport and airspace hazards, thereby protecting the lives and property of users of the Miami International Airport (Wilcox Field) and of occupants of land in its vicinity and preventing destruction or impairment of the utility of the airport and the public investment therein.]]~~

>>(2) Applications for variances, exceptions, or any other authorization for any construction or use not authorized by Sections 33-334, 33-335, 33-336, 33-337, or 33-338 shall be submitted and determined in accordance with the procedures provisions and requirements set forth in Florida Statutes, Section 333.03 and Sections 333.07 through and including 333.11 (1998) or successor legislation. Notwithstanding any provisions of the Code of Miami-Dade County to the contrary, for the purpose of zoning applications within the unincorporated area filed under Article XXXVII, the Board of County Commissioners shall constitute the board of adjustment pursuant to Florida Statutes, Section 333.10, and shall utilize the procedures for processing zoning applications pursuant to this chapter. Applications within the incorporated area shall be heard by the board of adjustment designated by the appropriate municipality.

(3) Prior to filing the application, the applicant shall forward to the Florida Department of Transportation as well as the Director of the Miami-Dade County Aviation Department by certified mail, return receipt requested, a copy of the application for both the Florida Department of Transportation and Aviation Department's review and comment, if any. Copies of the return receipts must be filed with the Director of the appropriate zoning department at the time of filing the application. No public hearing on the application may commence less than forty-six (46) days after receipt of the application by the Florida Department of Transportation and the Miami-Dade County Aviation Department. Notwithstanding any provision of the Code of Miami-Dade County or other applicable municipal code, failure to comply with the requirements of this subsection shall be grounds for appeal as set forth in Fla. Stat. s. 333.07(2)(a).

(4) Approval of variances shall be limited to those cases in which it is duly found that a literal application or enforcement of the regulations would result in unnecessary hardship and the relief granted would not be contrary to the public interest but granting thereof would do substantial justice and be in accordance with the spirit of this article, and such zoning boards are hereby

admonished that the intent and purpose of this article is to promote the health, safety and general welfare of the inhabitants of Miami-Dade County, Florida, by preventing the creation of an airport hazard or of a hazard to air navigation, thereby protecting the lives and property of users of Miami International Airport and of occupants of land in its vicinity and preventing destruction or impairment of the utility of the airport and the public investment therein.

(5) In addition to any findings required in this chapter, exceptions approving construction of an educational facility, excluding an aviation-related school, within the no school zone shall only be granted when the appropriate zoning board makes specific findings detailing how the public policy reasons for allowing construction outweigh health and safety concerns prohibiting such a location.

(6) Notwithstanding the foregoing provisions of this section, in granting any variances or any other authorization for any construction or use not authorized by Sections 33-334, 33-335, 33-336, 33-337, or 33-338 under this article, the Board of County Commissioners or the appropriate board shall require the owner of the structure or tree for which such authorization is being sought to install, operate and maintain thereon, at the owner's sole expense, such marking and lighting as may be necessary to indicate to aircraft pilots the presence of an obstruction, such marking and lighting to conform to the specific standards established by rule of the Department of Transportation.<<

Sec. 33-343. Conditions to variances.

Any variance granted under this article may, if such action is deemed advisable to effectuate the purposes of this article and reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain >>at his or her expense<<, or to permit the Miami-Dade County Aviation Department to install, operate, and maintain thereon at the owner's expense, such marking, or marking and lighting, as may be necessary to indicate to aircraft pilots the presence of an airport hazard.

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Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

Section 5. This ordinance does not contain a sunset provision.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

RAU

Prepared by:

APL/KHC

Abigail Price-Williams/Craig H. Coller